

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

LEON ANDERSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

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No. 3:19-cv-00647

JUDGE TRAUGER

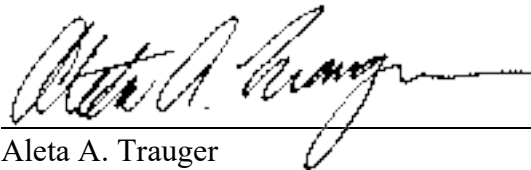
MEMORANDUM AND ORDER

The court denied the petitioner's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 on May 4, 2020, and denied a post-judgment motion that the court treated as a motion to alter or amend under Federal Rule of Civil Procedure 59(e) on July 16, 2020. (Doc. Nos. 27, 30.) On both occasions, the court determined that the petitioner had failed to make a substantial showing of a denial of a constitutional right and denied a certificate of appealability (COA). (Doc. No. 26 at 14–15; Doc. No. 27; Doc. No. 30 at 2.) The window to appeal this matter expired at the latest on September 14, 2020, 60 days after the court denied his post-judgment motion. *See* Fed. R. App. P. 4(a)(1)(B) (providing 60 days to appeal when the United States is a party) and (a)(4)(A) (providing that the time to appeal begins to run from entry of an order disposing of certain timely post-judgment motions). The petitioner did not file a timely notice of appeal.

The petitioner has now filed a "Petition for Certificate of Appealability," signed by him on November 30, 2020, in which he essentially re-argues his Section 2255 motion. (Doc. No. 33.) For the reasons explained in the court's previous rulings denying a COA, and for the further reason that a late-filed appeal would be deemed frivolous, *see Avery v. Ferguson*, No. CIV.04

5205, 2007 WL 1958917, at *5 (W.D. Ark. July 3, 2007) (adopting recommendation that habeas petitioner's "motion for leave to appeal IFP be denied as the appeal is untimely and therefore not taken in good faith"), that motion is **DENIED**. Pursuant to the Rules Governing Section 2255 Proceedings ("2255 Rules"), the petitioner may not appeal the denial of a COA, but he may seek a COA directly from the United States Court of Appeals for the Sixth Circuit. 2255 Rule 11(a); Fed. R. App. P. 22(b).

It is so **ORDERED**.



Aleta A. Trauger
United States District Judge